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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 DAVID P. VANDAMENT,

11 Plaintiff,

12 v.

13 COMMANDER MARK DUNCAN, *et al.*,

14 Defendants.

CASE NO. C08-5522RJB/JKA

ORDER ADOPTING REPORT
AND RECOMMENDATION

15 This matter comes before the Court on the Report and Recommendation of the Honorable
16 J. Kelly Arnold, United States Magistrate Judge. Dkt. 5. The Court has reviewed the report and
17 recommendation, Plaintiff's objections to the report and recommendation, and the remainder of
18 the file herein.

19 Plaintiff filed a motion for leave to proceed *in forma pauperis* (Dkt. 1) on August 22,
20 2008. Magistrate Judge Arnold granted that motion on September 8, 2008. Dkt. 3. Plaintiff also
21 filed a "Civil Rights Complaint Under 42 U.S.C. § 1983" (Dkt. 4) on September 8, 2008. In his
22 complaint, Plaintiff raises seven claims alleging various violations of his constitutional rights.

23 Magistrate Judge Arnold issued his Report and Recommendation (Dkt. 5) on September
24 8, 2008. In the report and recommendation, Magistrate Judge Arnold correctly concluded that
25 Plaintiff's 42 U.S.C. § 1983 action is a collateral attack on several underpinnings of the Plaintiff's
26 criminal conviction. Judge Arnold noted, "When an incarcerated person is challenging the very
27 fact or duration of his physical imprisonment, and the relief he seeks will determine that he is or
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1 was entitled to immediate release or a speedier release from that imprisonment, his sole federal
2 remedy is a writ of habeas corpus.” Dkt. 5, at 3 (citing *Preiser v. Rodriguez*, 411 U.S. 475, 500
3 (1973)). Judge Arnold further noted, “[e]ven a prisoner who has fully exhausted available state
4 remedies has no cause of action under § 1983 unless and until the conviction or sentence is
5 reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus.” Dkt. 5, at
6 3 (citing *Heck v. Humphrey*, 512 U.S. 477, 487 (1994)).

7 Plaintiff filed his objections to the report and recommendation (Dkt. 6) on September 22,
8 2008. In his objections, Plaintiff notes that he is currently involved in an appeal contesting the
9 denial of his motion in Superior Court to withdraw his guilty plea. Plaintiff requests that the
10 Court reject Judge Arnold’s recommendation to dismiss the action, and Plaintiff asks the Court
11 for leave to amend claims one, five, six, and seven of his complaint.

12 The Court, having reviewed the file and pertinent documents, concurs with the reasoning,
13 findings, and conclusions of Judge Arnold’s report and recommendation. The issues that Plaintiff
14 raised in his objections were thoroughly addressed and properly analyzed in Judge Arnold’s report
15 and recommendation. Given that the deficiencies in Plaintiff’s complaint are not amenable to cure
16 by amendment, Plaintiff’s request for leave to amend his claims should be denied.

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18 Therefore, the Court does hereby find and **ORDER**:

- 19 (1) The Court adopts the Report and Recommendation (Dkt. 5);
20 (2) Plaintiff’s Complaint (Dkt. 4) is **DISMISSED WITHOUT PREJUDICE**; and
21 (3) The Clerk is directed to send copies of this Order to Plaintiff, counsel for
22 Defendants, and to the Hon. J. Kelly Arnold.

23 DATED this 15th day of October, 2008.

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26 ROBERT J. BRYAN
27 United States District Judge
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